



TECHNIUM
SOCIAL SCIENCES JOURNAL

Vol. 14, 2020

**A new decade
for social changes**

www.techniumscience.com

ISSN 2668-7798



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Implementation of Article 2, Article 3 Decree of the State Minister of Agraria / Chairman of National Land Agency number 16 year 1997 on the decrease of land ownership rights to be changed to building use rights through the bidding process (Study at the Blitar Regency Land Office)

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Abstract. However, if at the time of the auction the guarantee is won by an entity, in this case a legal entity, then the status of ownership of the land rights must be immediately changed from property rights to building use rights. This is based on a decree, namely the Decree of the State Minister for Agrarian Affairs / Head of the National Land Agency Number 16 of 1997 contained in article 2 paragraph 3, which includes the following contents : In the case of a land right, in this case a property right a body is requested for several changes to it's rights, in this case a legal entity obtaining the rights through an auction process, then the rights must be transferred immediately and then registered from property rights to building use rights. In it's implementation, it's due to the fact that at the time the status of ownership of land rights, in this case ownership rights, is then converted into rights to build by an individual to an entity, which in this case the legal entity requires a lot of costs, and with a significant amount of time. Not for a moment, then it can create a new problem or problem that must be resolved immediately. The method used in this research is sociological juridical which is carried out by direct interviews with sources who are closely related to the research. Based on the results of the research, the solution is as follows: First, the application of the reduction of property rights to be converted into building uses based on Article 2 Agrarian/Head of the National Land Agency in 1997, namely: in it's implementation, because at the time the status of ownership rights to land, which in this case is a right of ownership, is then converted into a right to build by an individual to an entity, which in this case the legal entity requires a lot of costs, and with a long time, it can create a problem or new constraints that must be immediately resolved. Second, namely the obstacles in the Status of Ownership of Freehold Land to Rights of Land through the Tender Process Based on the Decree of the Minister/Head of the National Land Agency, are as follows: Lack of transparency in and information on land tenure and ownership; Land titling cannot be done quickly; Limited skilled personnel; The demands for juridical technical accuracy of the documents on which land rights are based must be relatively accurate; Incomplete Standard to date; Until now, there is no unified definition of customary land and state land.

Keywords. ownership status, land rights, property rights to building use rights

Preliminary

Every human being can own or give his land to other humans. This can happen because according to the Basic Agrarian Law therein states that there is a right in the land. (Susiaty & Setiadji, 2020) The rights in question are land rights.

Land rights are rights in which there is an authority given to someone who is considered to have an interest in the land. (Murni, 2018) Then from that, legal issues related to land rights began to emerge. One of the problems that can occur is because it has something to do with one of the articles in the Basic Agrarian Law, namely Article 4 paragraphs (1) and (2), in which the sound of the articles can be explained as follows *"on the basis of on the right to control that exists in a country, which in this case Indonesia, has determined in terms of giving, meaning that the gift can be done jointly with other people, which in the future land rights will give an authority not only for the state only, but also for parties related to the land rights."*

According to the Basic Agrarian Law in Article 35 paragraph (1), it explains that what is interpreted as a right to use a building is a right that is used for construction, and to have a building that is located above the land, where the land is land that isn't his own, but other people's, which has a time limit of approximately 30 years, and which can be extended to 20 years. The purpose of the extension is it that can be transferred or sold to other parties, and can be later burdened with a right, in this case a mortgage. (Rubiati et al., 2015)

The land rights can be traded or traded or used as rights belonging to other parties. (Saranaung, 2017) If the land is used as a tool which in this case is a guarantee for repayment of debts, then the money borrower, in this case the customer or debtor at one of the financial institutions, must be able to pay the debts it owns according to the due date of payment. Which has been mutually agreed upon. However, if the customer or debtor cannot pay the debt on time, then an auction will be carried out between the creditor or party from the financial institution and the customer or debtor. (Binsneyder & Rosando, 2020) Meanwhile, if during the auction, the collateral owned by a customer or debtor in the financial institution ends or is won by an individual, then it's related to the status of ownership of land rights, in which case the ownership rights don't need to be changed. (Halim, 2018)

However, if at the time of the auction the guarantee is won by an entity, in this case a legal entity, then the status of ownership of the land rights must be immediately changed from property rights to building use rights. This is based on a decree, namely the Decree of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 16 of 1997 which is contained in Article 2 paragraph (3), which contains the following contents "in the case of land rights, in this case the right Property which is requested for several changes to its rights by an entity, in which case the legal entity obtaining the rights through an auction process, the rights must be transferred immediately and then registered from property rights to building use rights". (Reki, 2018)

In its implementation, it is due to the fact that at the time the status of ownership of land rights, in this case ownership rights, is then converted into rights to build by an individual to an entity, which in this case the legal entity requires a lot of costs, and with a significant amount of time. Not for a moment, then it can create a new problem or problem that must be resolved immediately. Based on the description of the background described above, researchers are interested in conducting research by identifying the application of Article 2 paragraph (3) of the decree of the minister of agrarian state/ head of the national land agency number 16 of 1997 regarding the decline in ownership status of land ownership rights to be converted into land use rights for buildings through an auction process (study at the Blitar Regency Land Office)?

Research methods

This research is normative legal research. Normative legal research is research that examines legal issues from a legal perspective in depth on established legal norms.(Michael, 2019)

Discussion

Process of Transfer of Rights to Land

Process of Transfer of Rights to Land Deeds of Land Deed Making Officials must be attended by parties whose people are authorized by them with a written power of attorney in accordance with the rules of the notary deed, while the power of attorney for the buyer may be with the deed below in making this sale and purchase deed is a photocopy of the card identity card, photocopy of family card, marriage certificate, land and building notification letter. Making by at least two witnesses who according to the prevailing laws and regulations fulfill the requirements to act, which gives information regarding the presence of the parties or their proxies, the existence and the legal act of the said act. The official of the sale and purchase deed to the parties concerned (seller and buyer), the contents and purpose of the deed, the transfer of rights.

The original sheet of the Land Deed of the Official for Making the Land Deed, one sheet is kept at the Office of the Official for Making the Land Deed and one sheet of the local Head for registration purposes, while the concerned (seller and buyer) are given.

Documents for registration of the transfer of land rights or land ownership rights in the local district/city are:(Nurul Intan Sari Dalimunthe & Rizal Lutfi, 2019)

- a) Letter of transfer of rights signed by the right (buyer) or proxy;
- b) Written power of attorney from if the person submitting an application for transfer of rights (the buyer);
- c) Sales deed which is still in office and which includes the location of the land;
- d) Proof of identity rights (seller);
- e) Proof of identity of the right party (buyer);
- f) Transferred title certificate (traded);

Submission of Certificate of the name of the holder of the old right holder of the new right as buyer by the head of the buyer's district/city land office or his attorney. According to the Basic Agrarian Law, this is done mainly in relation to third parties who have good faith. The certificate contained therein has legal force and must be other proof that proves otherwise. This is in accordance with the provisions of the Government Regulation which states that a letter is valid as strong, in the sense that it is proven otherwise, and the juridical data in it must be received as correct, as long as it is concerned.

Application of Article 2 paragraph (3) Decree of the minister of agrarian state / head of the national land agency number 16 of 1997 regarding the reduction of ownership status of freehold land to be converted into land use rights for buildings through an auction process (study at the Blitar Regency Land Office)

In Article 2 paragraph (3) the decree of the minister of agrarian state / head of the national land agency number 16 of 1997 states that:

"In the case of a Property Right whose rights change is requested by a legal entity through a public auction, then the application for registration to change the Right to Ownership is submitted by the legal entity concerned at the same time as the application for registration of transfer of rights and both applications are resolved simultaneously by registering the change

in rights first and then registering the transfer of rights, provided that for Property Rights which haven't been registered, the provisions in paragraph (2) are also implemented".

The application for ownership of land that is entitled to become land use rights for buildings is referred to in the local Land Office, accompanied by:

- a) Application for change of rights;
- b) Application letter not concerned;
- c) Building use certificate for which change of rights is requested, or proof of ownership of land that has not been owned;
- d) An excerpt issued by the auction official is won by the public;
- e) Letter of Mortgage, if encumbered with Mortgage Rights;

In the case of ownership rights that haven't changed the right, then the application for registration is concurrent with the application and completion of the registration shall be carried out after the stipulation of the ownership rights is applied. Whereas law through a public auction, the application for registration of changes to property rights is submitted by the legal entity concerned at the same time by registering the change of rights first and then the rights. (Dewi Pramudiyana & Hafidah, 2019)

In its implementation, there are several problems in implementing the provisions contained in the Ministerial Decree. As for some of these problems, the first is that when you want to register property rights, the change of rights will be carried out by a legal entity from the finance institution itself, not from a legal entity intended by the provisions of the Ministerial Decree, which in this case is a legal entity from auction winner.

Second, that is, after the legal entity registers changes to property rights, the change of rights will not proceed to the next stage, namely registration again in connection with the transfer of rights.

Barriers of the Land Office of Blitar Regency in reducing the Status of Ownership of Freehold Land to Right to Use Land through the Auction Process

Lack of transparency in and information on land tenure and ownership. This has resulted in the concentration of control and ownership of land, only in a small part of the community. On the other hand, land titling goes beyond the supply side, despite targeted land administration projects. (Doly, 2017)

Another issue is also land. Land titling can go fast, depending on who is. In practice, land titles can quickly come out if interested parties provide a far-reaching fee using a memo from a strongman. This phenomenon of land certification that smells of corruption doesn't only occur in the Land Office. This problem doesn't concern legal material, but concerns *clean government*. Those who become victims are generally small people, but rather masters who must be entertained and served. (Susanto, 2014)

Given the many obstacles in issuing national land title certificates, a comprehensive and systematic improvement must be made for land certificates. The low level of this certification comes from the role of the National Land Agency as an authority in the field.

The low level of land certification has become a serious concern of the World Bank and, due to the lack of land registration, it's difficult for the World Bank to divide, because the land is largely unregistered.

Thus, if the policy can be implemented, will result in guaranteed certainty of land rights. (Asri Agustiwi, S.H., M.H, 2017) In addition, this policy will provide recognition and protection of all property rights to the land he owns, whether registered or not. With the existence of an obstacle is that changes in rights or reduction of rights cannot be granted by the regional government, while on the other hand the land has been acquired /purchased first.

Conclusion

In its implementation, there are several problems in implementing the provisions contained in the Ministerial Decree. As for some of these problems, the first is that when you want to register property rights, the change of rights will be carried out by a legal entity from the finance institution itself, not from a legal entity intended by the provisions of the Ministerial Decree, which in this case is a legal entity from auction winner.

Second, that is, after the legal entity registers changes to property rights, the change of rights will not proceed to the next stage, namely registration again in connection with the transfer of rights.

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